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MEMO ENDORSED

October 12, 2007

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BY E-MAIL

Hon. Judge P. Kevin Castel
Daniel Patrick Moynihan Courthouse
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

USDS SDNY
DOCUMENT
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DATE FILED: <u>10/16/07</u>

Re: Ventura Foods, LLC v. Supreme Oil Company, Incorporated a.k.a.
Admiration Foods (07 Civ. 7338) (PKC) (MHD)

Dear Judge Castel:

The parties agreed to the current scheduling order on September 28, 2007, and Supreme was well aware of the deposition date and brief deadlines. Nevertheless, Ventura will consent to the adjourned briefing schedule request by Supreme.

Supreme's counsel's statements in their letter regarding the merits of this matter including whether likelihood of confusion exists and whether Ventura Foods was irreparably harmed were inappropriate in connection with an extension request, and Ventura disagrees with Supreme's position. Ventura's distributor was marketing Supreme's product as "NEW MELFRY (MEGA FRY)". After Ventura first contacted Supreme in May 2007 about infringement of its MEL-FRY® trademark and trade dress, Supreme advised Ventura in June 2007 that it would "continue to use" its MEGA-FRY mark, label and packaging. (8/16/07 Ventura's Splane Decl., Ex. J.) Their letter concluded "Supreme Oil will not be complying with Ventura Foods' demands" Although Supreme contends it has now ceased sales of MEGA-FRY, it was still marketing the MEGA-FRY branded product and displaying the infringing trade dress on its website several weeks after this suit was commenced on August 16, 2007. Without

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a preliminary injunction, Supreme can continue selling, distributing and marketing the product and thereby continue to cause confusion and irreparable harm to Ventura's established and distinctive MEL-FRY® trademark and trade dress.

Respectfully submitted,

Kerry A. Brennan
Kerry A. Brennan

cc: John P. Luther, Esq. (via e-mail)
Amanda M. Roach, Esq. (via e-mail)
Edward P. Kelly, Esq. (via e-mail)

Based upon the statements made in the letter of October 12 which I have reviewed this Ms. morning, I am directing my counsel to contact opposing counsel TODAY in an effort to resolve all outstanding matters relating to the motion. If significant progress is made, I will consider deferring the hearing until 10/16/07.

SAC/PK
10/16/07